

in opinion
March 24, 195860M
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Paul E. Farnum, Acting Commissioner of Education
Room 410, State House Annex
Concord, New Hampshire

Dear Mr. Farnum:

This is with reference to your letter of January 30, 1958 and our discussion subsequent to that date concerning the letter addressed to you on January 21, 1958 by the Superintendent of Schools at Portsmouth. Mr. Beal's letter poses the question whether the Portsmouth School Board will be required to furnish educational facilities for children at Pease Air Force Base in the event that the school building to be constructed on the Base by the Federal government is not completed in time for occupancy next Fall.

We understand that the matter of school facilities for these children has been the subject of extensive dealings among the Federal government, the City of Portsmouth and the State Board of Education, and that as a result the United States proposes to build a school upon the Base and to staff it, with supervision to be furnished by the local authorities.

We do not deem it necessary to discuss the many practical problems which will be encountered in carrying out the requirements of the law in this regard. These are matters to be resolved by those responsible for school administration. It is suggested, however, that you may wish to impress upon the Federal authorities the fact that the State Board has certain explicit duties in respect to the education of the children upon the Base, as hereinafter set forth and to solicit their immediate attention to the problem.

It is the duty of the State Board of Education to enforce the laws relating to compulsory school attendance, RSA 186:11 XVIII. The question for immediate resolution, then, is whether the children within the age groups specified by statute who reside upon the Air Force Base are within the laws requiring such attendance. See RSA 193:1; RSA 189:1. We advise that they are within such statutes; and that, consequently, they must attend either public schools or approved private schools during the periods of time designated by law for such attendance.

We are advised by the Secretary of State that the United States has not filed with his office "an accurate description and plan of the lands owned by the Government and occupied by it for an Air Force Base/

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verified by oath of some officer of the United States having knowledge of the facts" so as to take advantage of the offer of cession of jurisdiction set forth in RSA 123:1 (Supp). In such circumstances it is conclusively presumed that the Federal government has not accepted jurisdiction over the territory comprising Pease Air Force Base. 40 U.S.C.A. s.255. The jurisdiction of the State remains in full force there, and is to be exercised as over the lands of any private proprietor except to the extent that such exercise would interfere with the United States in carrying out the purposes for which the land was acquired and is held.

It is a consequence of the foregoing that the children residing within the Base are within the jurisdiction of the school district whose boundaries embrace the premises upon which they live; and from such jurisdiction flow the responsibility of the district to provide appropriate educational facilities for the children and the right of the children to receive the benefits intended by the laws of the State relative to compulsory attendance.

You are assured of the cooperation of this office in doing everything within its authority to be of assistance in this matter.

Very truly yours,

Warren E. Waters
Deputy Attorney General

WEW/m